IN THE UTAH COURT OF APPEALS

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<u>E.C. "Bud" Barnes</u> , Rampart) MEMORANDUM DECISION
Recreational, and Utah Trails) (Not For Official Publication)
Resorts & Tours,) Case No. 20060010-CA
Plaintiffs and Appellant,) FILED (March 9, 2006)
V.)
Dale E. Clarkson; Golden Circle Tours, Inc.; and Clarkson Properties, Inc.,) 2006 UT App 96))))
Defendants and Appellees.)

Sixth District, Kanab Department, 030600004 The Honorable Wallace A. Lee

Attorneys: E.C. "Bud" Barnes, Kanab, Appellant Pro Se Barry E. Clarkson and Jenny T. Jones, St. George, for Appellees

Before Judges Bench, Greenwood and McHugh.

PER CURIAM:

E.C. "Bud" Barnes appeals the trial court's order denying his motion to reconsider the grant of summary judgment regarding his claims against defendants Dale E. Clarkson, Golden Circle Tours, Inc., and Clarkson Properties, Inc. (collectively, Clarkson). This is before the court on Clarkson's motion to dismiss the appeal for lack of jurisdiction based on the absence of a final order.

Appellate courts "[do] not have jurisdiction over an appeal unless it is taken from a final judgment, Utah R. App. P. 3(a), or qualifies for an exception to the final judgment rule."

Loffredo v. Holt, 2001 UT 97,¶10, 37 P.3d 1070. "For an order or judgment to be final, it must dispose of the case as to all the parties and finally dispose of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50,¶9, 5 P.3d 649. Where a counterclaim remains pending in the trial court, there is no final order for purposes of appeal. See id. at ¶11.

Here, although Barnes's claims were determined on summary judgment, Clarkson's counterclaims remain pending below. As a result, there is no final order for purposes of appeal. Nonfinal orders may be appealed if permission is granted by an appellate court pursuant to rule 5 of the Utah Rules of Appellate Procedure or if the order is certified as final pursuant to rule 54(b) of the Utah Rules of Civil Procedure. See id. at ¶12. However, Barnes has not pursued either of these avenues for appeal. Accordingly, this court lacks jurisdiction over this appeal and must dismiss it. See id. at ¶11.

This appeal is dismissed without prejudice to the timely filing of a notice of appeal after the entry of a final order.

Russell W. Bench, Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge